

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of the Office of Financial and Insurance Regulation

In the matter of:

Office of Financial and Insurance Regulation

Enforcement Case No. 11-11407

Agency No. 11-065-RL

Petitioner,

v

Express Money Line

Respondent.

_____ /

Issued and entered,
this 2nd day of April, 2012
by Stephen R. Hilker
Chief Deputy Commissioner

ORDER TO CEASE AND DESIST

I. BACKGROUND

1. On November 7, 2011, the Office of Financial and Insurance Regulation (OFIR) issued a Notice of Intention to Issue a Cease and Desist Order and Notice of Hearing and Order to Respond (herein together referred to as Notice) pursuant to the Michigan Regulatory Loan Act (Act), 1939 PA 21, MCL 493.1 *et seq.* against Respondent. The Notice contained the following allegations:
 - a. Respondent is an entity with its principal place of business located in Wilmington, Delaware. A review of OFIR records reveals that Respondent is not licensed under the Act.
 - b. Section 2 of the Act prohibits a person from engaging in the business of making loans of money unless that person is licensed under the Act. MCL 493.2.
 - c. A "loan" or "regulatory loan" means a loan made by a licensee to an individual for personal, family, or household use. MCL 493.1(2)(j). A "licensee" is a person licensed or required to be licensed under this act. MCL 493.1(2)(h).
 - d. On July 25, 2011, OFIR received a complaint from a Michigan resident regarding a loan from Respondent made on March 10, 2011. The

Complainant is an individual who received a loan of money for personal, family, or household use.

- e. OFIR investigated the complaint, and on October 7, 2011, an attorney representing Respondent provided a written response to OFIR. Contained within that correspondence, the attorney acknowledges that the transaction was a "written loan agreement." In addition, Respondent, on its website, advertises its services as an "ExpressMoneyLine Line of Credit Loan."
 - f. Based on the information discovered, Respondent is engaged in the business of making loans of money to Michigan residents for personal, family, or household use, while those residents are located in the state of Michigan.
2. The Notice required Respondent to, within 21 calendar days of receipt to either, agree to a resolution of the contested case by settlement agreement, file an answer to the allegations, or file a statement that respondent intends to attend the hearing or request an adjournment that states the reasons why an adjournment is necessary.
 3. On November 15, 2011, the Notice was mailed to the Respondent's counsel, previously identified in earlier correspondence. Respondent's counsel replied on November 23, 2011, stating they were not authorized to accept service of process for the Respondent. On November 29, 2011, the Notice was re-mailed to the Respondent via certified mail. The Notice was received by the Respondent on December 7, 2011.
 4. Respondent replied, through counsel, to the Notice on December 23, 2011, via fax, with follow up copies via United States Postal Service. Respondent stated its belief that it was not engaged in activities covered by the laws of Michigan, that it does not operate in the state of Michigan, that it makes small, short-term loans from its offices outside of Michigan to consumers who seek out its services on the Internet, that the loans are funded from, and repaid to, its bank account outside of Michigan, and that they are unable to discern any nexus between it and Michigan that would provide for jurisdiction. No further pertinent information was received from Respondent.

II. FINDINGS

5. Michigan's long arm statute, MCL 600.715, governs the exercise of limited personal jurisdiction, and states in part:

The existence of any of the following relationships between a corporation or its agent and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise limited personal jurisdiction over such corporation and to enable such courts to render personal judgments against such corporation arising out of the act or acts which create any of the following relationships:

(1) The transaction of any business within the state.

(5) Entering into a contract for services to be performed or for materials to be furnished in the state by the defendant.

6. *Oberlies v. Seachmont Resort, Inc.* 246 Mich. App. 424, (2001), established very broad parameters in determining what amount of business must be transacted to qualify under MCL 600.715(1), stating:

Our Legislature's use of the word "any" to define the amount of business that must be transacted establishes that even the slightest transaction is sufficient to bring a corporation within Michigan's long-arm jurisdiction. See *Sifers v. Horen*, 385 Mich. 195, 199, n. 2, 188 N.W.2d 623 (1971) (stating that M.C.L. § 600.715(1) refers to "each" and "every" business transaction and contemplates even "the slightest" act of business in Michigan), and *Viches v. MLT, Inc.*, 127 F.Supp.2d 828, 830 (E.D.Mich., 2000) (Judge Paul Gadola stating: "The standard for deciding whether a party has transacted any business under § 600.715[1] is extraordinarily easy to meet. 'The only real limitation placed on this [long arm] statute is the due process clause.' " [citation omitted]).

7. Respondent, through counsel, acknowledged its transaction with Complainant was a "written loan agreement."
8. As established in *Oberlies*, by entering into a transaction with a resident of this state, Respondent transacted business in Michigan thereby subjecting itself to personal jurisdiction in Michigan under MCL 600.715(1).
9. By entering into a contract for a service to be performed in the state by Respondent, in this case the financial service of the making of a loan, Respondent has also subjected itself to personal jurisdiction in Michigan under MCL 600.715(5).
10. It has long been established in the United States that "due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington*, 326 US 310, 316 (1945). Michigan employs a three part test to determine whether or not a non-resident defendant has sufficient minimum contacts with the State to support the exercise of limited personal jurisdiction. As stated in *Walter v. M. Walter & Co., Inc.* 179 Mich.App. 409, (1989):

First, the defendant must have purposely availed himself to the privilege of conducting activities in Michigan, thus invoking the benefits and protections of this state's laws. Second, the cause of the action must arise from the defendant's activities in Michigan. Finally, the defendant's activities must have a substantial enough

connection with Michigan to make the exercise of jurisdiction over the defendant reasonable.

11. The parameters of “purposeful availment” were established by Michigan Supreme Court Justice Charles Levin in *Khalaf v. Bankers Shippers Ins. Co.* 404 Mich 134, 153 (1978), as:

...something akin either to a deliberate undertaking to do or cause an act or thing to be done in Michigan or conduct which can be property regarded as a prime generating cause of the effects resulting in Michigan, something more than a passive availment of Michigan opportunities. The defendant will have reason to foresee being “haled before” a Michigan court.

12. In *Neogen Corp. v. Neo Gen Screening, Inc.* 282 F.3d 883, (2002), the 6th Circuit Court of Appeals addressed the issue of what qualifies as purposeful availment versus passive availment with regard to business websites, discussing concepts of interactive usage versus passively posted information. (see *Zippo Mfg. Co. v. Zippo Dot Com, Inc.* 952 F.Supp. 1119 (W.D. Pa. 1997). The discussion in *Neogen* was reinforced and expanded upon in *McCluskey v. Belford High School*, 795 F.Supp.2d 608 (2010), where questions again arose as to whether a website qualified as “purposeful availment.” In *McClusky* the court stated that in both the present case, and in *Neogen*:

... it was the potential customer who first reached out to the defendant, and not the other way around. Yet, the *Neogen* court found the existence of specific jurisdiction over the non-resident defendant based on actions taken by the defendant, and directed toward Michigan customers, after initial contact was established. Specifically, after potential Michigan customers established the initial contact, the defendant welcomed and accepted their business, knowing that they hailed from Michigan...

13. In *Lifestyle Lift Holding Co. Inc. v. Prendiville*, 768 F.Supp.2d 929, (E.D. Mich., 2011), the court discussed at length the case *Visage Spa LLC v. Salon Visage, Inc.* (Not Reported, E.D. Mich. 2006), where defendant Spa Visage, a Tennessee Limited Liability Company, was found to have purposefully availed itself of the privilege of conducting business in Michigan based on one sale of a gift certificate to a resident in Michigan through its website. *Lifestyles Lift Holding Co. Inc.* quoted *Visage Spa* stating:

If [Visage] Spa was not intending for residents of Michigan to purchase gift certificates from its website, then it would have limited its sales to states other than Michigan, or simply refused to sell to anyone located in Michigan. This could have been easily accomplished by a message posted on [Visage] Spa's website where it sells its gift certificates stating that its sales are limited to Tennessee residents, or by refusing to offer “Michigan” as a state that can be placed in the billing address page when placing an

effective relief, at least when that interest is not adequately protected by the plaintiff's power to choose the forum; the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies....
[Citations omitted.]

20. To properly execute the statutory mandates of the Act, OFIR must be able to prosecute actions against non-licensed persons.
21. Section 2 of the Act prohibits a person from engaging in the business of making loans of money unless that person is licensed under the Act. MCL 493.2. The necessity of jurisdiction to regulate under the Act as charged is vital. The burden is upon Respondent to defeat jurisdiction by presenting a compelling case that the presence of some other consideration would render jurisdiction unreasonable. Respondent has failed to articulate any position supporting a claim of an unreasonable burden.
22. Based on the analysis provided above, OFIR has personal jurisdiction over Respondent pursuant to MCL 600.715.
23. The Notice required Respondent to, within 21 calendar days of receipt to either, agree to a resolution of the contested case by settlement agreement, file an answer to the allegations or file a statement that Respondent intends to attend the hearing or request an adjournment and stating the reasons why an adjournment is necessary. Respondent failed to take any of the above three actions as required thereby consenting under the Act to the issuance of this Order to Cease and Desist under Section 9a(3) of the Act, MCL 493.9a(3), which states "If the licensee fails to appear at the hearing by a duly authorized representative, the licensee shall have consented to the issuance of the cease and desist order."

III. ORDER

THEREFORE, in light of the above FINDINGS, Respondent shall **CEASE AND DESIST** from engaging in the business of making loans of money to Michigan residents for personal, family, or household use without licensure as required under Section 2 of the Act, MCL 493.2.


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Chief Deputy Commissioner

order. The information exchanged over the internet during the purchase of [Visage] Spa's gift certificates was sufficient for [Visage Spa] to reasonably anticipate being haled into court in this state. Indeed, while [Visage Spa] argues that "goods" or "products" cannot be purchased on [Visage] Spa's website, [Visage] Spa makes money when the gift certificates are purchased, not when the services are rendered; the sale is made regardless of whether the gift certificate is ever redeemed. Accordingly, the Court finds that Plaintiff has met its prima facie burden of demonstrating that [Visage] Spa has purposefully availed itself of the privileges of conducting business in this jurisdiction.

14. A review of the investigative record shows the Respondent purposely availed itself of the privilege of conducting activities in Michigan by running a website which induced a citizen of Michigan to become its customer through the submission of information leading to the acceptance of business with the knowledge that the customer was from Michigan.
15. Respondent engaged in the business of making loans of money to Michigan residents for personal, family, or household use, while those residents were located in the State of Michigan.
16. On its website, Respondent advertises its services as an "ExpressMoneyLine Line of Credit Loan."
17. OFIR received a complaint against Respondent from a citizen of Michigan regarding a loan from Respondent. The Complainant is an individual who received a loan of money for personal, family, or household use.
18. The cause of the action arises from the defendant's activities in Michigan.
19. *Starbrite*, supra at 313, establishes that when the first two parts of the due process test are met, a rebuttable presumption arises that jurisdiction is reasonable, quoting from *Burger King Corp v. Rudzewicz* 471 US 462 and *World-Wide Volkswagen Corp. v. Woodson*, 444 US 286, stating:

[W]here a defendant who purposefully has directed [its] activities at forum residents seeks to defeat jurisdiction, [it] must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." *Burger King*, at 477, 105 S.Ct. at 2184-85. As noted in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292, 100 S.Ct. 559, 564-65, 62 L.Ed.2d 490 (1980), the burden on the defendant is a primary concern, but, in appropriate cases, it should be considered in light of other relevant factors, including the forum State's interest in adjudicating the dispute; the plaintiff's interest in obtaining convenient and